

**CITY OF SWARTZ CREEK  
SWARTZ CREEK, MICHIGAN  
MINUTES OF THE COUNCIL MEETING  
DATE 09/27/2010**

The meeting was called to order at 7:00 p.m. by Mayor Abrams in the Swartz Creek City Council Chambers, 8083 Civic Drive.

Invocation and Pledge of Allegiance to the Flag.

Councilmembers Present: Abrams, Binder, Hicks, Hurt, Porath, Shumaker.

Councilmembers Absent: Krueger.

Staff Present: City Manager Paul Bueche, Deputy City Clerk Deanna Korth, Police Chief Rick Clolinger.

Others Present: Boots Abrams, Sharon Shumaker, Tommy Butler, Pam Spillane, Donna Gerrais, Ted Kramer, Bob Plumb, Ron Schultz, Jim Florence, Randall Schiestel.

**Resolution No. 100927-01**

**(Carried)**

Motion by Councilmember Hurt  
Second by Councilmember Binder

**I Move** the Swartz Creek City Council hereby excuse the absence of Councilmember Krueger due to work commitments.

YES: Binder, Hicks, Hurt, Porath, Shumaker, Abrams.  
NO: None. Motion Declared Carried.

**APPROVAL OF MINUTES**

**Resolution No. 100927-02**

**(Carried)**

Motion by Mayor Pro-Tem Porath  
Second by Councilmember Hurt

**I Move** the Swartz Creek City Council hereby approve the Minutes of the Regular Council Meeting, held September 13, 2010, to be circulated and placed on file.

YES: Hicks, Hurt, Porath, Shumaker, Abrams, Binder.  
NO: None. Motion Declared Carried.

**APPROVAL OF AGENDA**

**Resolution No. 100927-03**

**(Carried)**

Motion by Councilmember Shumaker  
Second by Councilmember Hurt

**I Move** the Swartz Creek City Council approve the Agenda, as printed, for the Regular Council Meeting of September 27, 2010 to be circulated and placed on file.

YES: Hurt, Porath, Shumaker, Abrams, Binder, Hicks.  
NO: None. Motion Declared Carried.

**REPORTS AND COMMUNICATIONS:**

**City Manager's Report**

**Resolution No. 100927-04**

**(Carried)**

Motion by Councilmember Hicks  
Second by Councilmember Binder

**I Move** the Swartz Creek City Council approve the City Manager's Report of September 27, 2010, to be circulated and placed on file.

YES: Porath, Shumaker, Abrams, Binder, Hicks, Hurt.  
NO: None. Motion Declared Carried.

All other reports and communications were accepted and placed on file.

**MEETING OPENED TO THE PUBLIC:**

None.

**COUNCIL BUSINESS:**

**Presentation, Swartz Creek Women's Club**

The Swartz Creek Women's Club made a presentation to the Swartz Creek Police Department's K-9 program.

**Resolution No. 100927-05**

**(Carried)**

Motion by Councilmember Binder  
Second by Councilmember Hurt

**I Move** the City of Swartz Creek accept a donation in the amount of \$1,000 from the Swartz Creek Women's Club, funds to be applied to the City's Police Department K-9 Program.

Discussion Took Place.

YES: Porath, Shumaker, Abrams, Binder, Hicks, Hurt.  
NO: None. Motion Declared Carried.

**Police Department Update, Chief Clolinger**

**(Discussion Topic)**

Chief Clolinger gave a brief update on the budget issues at the Swartz Creek Police Department. Chief Clolinger also spoke about a prescription drug drop off program that is underway in the city. Chief Clolinger updated the City Council on the statistics of the K-9 unit.

**Boards & Commissions, Local Officers Compensation Commission**

**Resolution No. 100927-06**

**(Carried)**

Motion by Councilmember Hurt  
Second by Councilmember Shumaker

**I Move** the City of Swartz Creek re-appoint Monte Morgan, of 5388 Greenleaf Drive, to the Swartz Creek Local Officers Compensation Commission, the three year term to run October 1, 2010 to September 30, 2013.

YES: Shumaker, Abrams, Binder, Hicks, Hurt, Porath.  
NO: None. Motion Declared Carried.

**Boards & Commissions, Local Officers Compensation Commission**

**Resolution No. 100927-07**

**(Carried)**

Motion by Mayor Pro-Tem Porath  
Second by Councilmember Hurt

**I Move** the City of Swartz Creek re-appoint Patricia Maksymiu, of 7188 Miller Road, to the Swartz Creek Local Officers Compensation Commission, the four year term to run October 1, 2010 to September 30, 2014.

Discussion Took Place.

YES: Abrams, Binder, Hicks, Hurt, Porath, Shumaker.  
NO: None. Motion Declared Carried.

**Boards & Commissions, Local Officers Compensation Commission**

**Resolution No. 100927-08**

**(Carried)**

Motion by Councilmember Shumaker  
Second by Councilmember Binder

**I Move** the City of Swartz Creek re-appoint Tommy Butler, of 40 Somerset Drive, to the Swartz Creek Local Officers Compensation Commission, the one year term to run October 1, 2010 to September 30, 2011.

YES: Binder, Hicks, Hurt, Porath, Shumaker, Abrams.  
NO: None. Motion Declared Carried.

**Water – Sewer Rates**

**(Discussion Topic)**

City Manager Bueche gave a brief update on the current water/sewer rates and possible rate increases due to increases from the County.

**Trail System**

**(Discussion Topic)**

City Manager Bueche updated the Council on the current status of the Trail System.

**Heritage Association Street Repairs**

**(Discussion Topic)**

City Manager Bueche spoke about the current funding status of the street repairs for Heritage Village. Mr. Bueche spoke about a possible public hearing on the issue at the end of October.

**Assessor’s Contract Renewal**

**Resolution No. 100927-09**

**(Carried)**

Motion by Councilmember Hicks  
Second by Councilmember Hurt

**I Move** the City of Swartz Creek approve an agreement with Landmark Appraisals, of Flint, Michigan, agreement as follows:

**AGREEMENT FOR  
PROFESSIONAL ASSESSOR SERVICES**

This Agreement (“Agreement”), made and entered into this 27<sup>th</sup> day of September, 2010 by and between the **City of Swartz Creek**, a Michigan Municipal Corporation, with principal offices at 8083 Civic Drive, Swartz Creek Michigan 48473 (“City”) and, **Landmark Appraisal Company**, G-3247 Beecher Road, Suite 800, Flint Michigan 48532 (“Landmark”).

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**WHEREAS**, the City desires to retain Landmark, as an independent contractor, to perform the duties as its certified assessor; and

**WHEREAS**, Landmark has qualified personnel with the proper State CMAE certification to act in that capacity for and on behalf of the City; and

**WHEREAS**, the parties wish, by this Agreement, to define their respective rights and responsibilities during the term of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants set forth herein, the parties hereto, acting by and through their duly authorized representatives, **HEREBY AGREE AS FOLLOWS:**

**SECTION I: BASIC SERVICES OF LANDMARK**

Landmark shall perform the following service for and on behalf of the City.

### **1.1 General Duties:**

Landmark shall be required to perform all duties of an assessor pursuant to City Charter, Michigan statutory and case law, Michigan State Tax Commission rules, regulations and policies, and all other rules and guidelines established for the proper performance of said position, as same may from time to time be amended, while this Agreement is in effect, and shall conduct and perform same in accordance with all applicable standards of professional conduct required of such Assessors. If material changes in the laws, statutes, rules, guidelines or City Charter during the term of this Agreement result in a substantial additional work burden on Landmark, Landmark and the City agree to enter into good faith negotiations regarding possible amendments to this Agreement. For purposes of this paragraph, the term "substantial additional work burden" shall be determined to exist by mutual agreement of Landmark and the City. If they cannot agree as to whether a substantial additional work burden has been imposed upon Landmark, Landmark and the City shall select a mutually agreeable mediator/arbitrator who shall facilitate the negotiations to assist the parties in reaching such a determination, and if an impasse is reached in such negotiations, shall make said determination. The determination of the mediator/arbitrator shall be final, however, said mediator/arbitrator shall not have authority to establish the amount of additional compensation, if any.

### **1.2 Office Hours:**

During the term hereof, Landmark shall maintain office hours at City Hall at the above address, as follows:

- A. Landmark shall devote at least one workday each week to maintaining office hours at the City offices for public appointments. The parties shall specifically agree upon a regular schedule for the maintenance of such office hours. In the event Landmark is unable to be present for office hours on the appointed days, it shall notify the City of the fact as soon as is reasonably practicable and an alternative day shall be substituted. Landmark's assigned assessor will be allowed up to four weeks (four days) vacation per year. Landmark will notify the City in advance of any vacation. The City reserves the right to deny vacation, however shall not do so unreasonably.
- B. If the specified office days of Landmark fall on a day recognized as a holiday for City employees, then it will be recognized as a holiday by Landmark.

### **1.3 Public Relations/Customer Service:**

Landmark shall work with and advise property owners in the ad valorem taxation system in an attempt to eliminate adversarial situations and establish positive public relations. The parties acknowledge that holding specific office hours for the public is valuable in the process of providing high quality customer service. The City wants to ensure that members of the public and City staff that need information from Landmark, or wish to speak to Landmark, are able to do so on a relatively convenient basis. In that regard, in addition to the hours specified in Paragraph 1.2, Landmark agrees to meet with or contact residents and City staff members beyond normal office hours as appropriate to address their tax assessment-related concerns. Phone calls and answers to emails and faxes will be responded to in a timely manner, with every effort made to respond to same within 24 hours of receipt by Landmark.

### **1.4 New Construction/Loss Adjustment:**

During the term of this Agreement, Landmark shall physically observe all new construction and real estate improvements through cooperation with the Zoning Administrator and will review all building permits. A copy of all building permits shall be provided for Landmark's use. All permits shall be provided with the correct permanent parcel identification number entered thereon. Likewise, Landmark shall physically observe damaged or destroyed properties with respect to the making of any loss adjustments as shall be necessary in the

performance of her duties.

**1.5 Economic Condition Factors (ECF):**

During the term hereof, Landmark shall review and prepare new land values and economic condition factors (ECF) by areas and apply these factors to property records so that the current assessment is reflected as 50% of true cash value on the assessment record.

**1.6 “Proposal A” Requirements:**

The requirements of Michigan Public Act 415 of 1994 and all related property tax reform legislation amendments and updates shall be followed and monitored as required. This includes by example, but is not limited to, the filing of all associated reports and forms to fulfill the following requirements:

- A. Approve or deny homestead and agricultural exemptions;
- B. Track property transfer affidavits, matching them with deeds within 45 days of being filed;
- C. Apportion the homestead portion of a combination-use building;
- D. Determine the homestead status of parcels resulting when homestead parcels are split or; and
- E. Calculate both assessed and tentative taxable values for all parcels, taking into consideration losses, new construction and replacement in any given year.

**1.7 Assessment Roll Preparation and Records:**

Landmark shall enter the assessments onto the Ad Valorem and Industrial Facilities Tax (IFT) assessment rolls and prepare the warrant authorizing the collection of taxes by the City Treasurer. Landmark, in cooperation with the City Treasurer, City Clerk and Finance Officer shall also enter any delinquent City utility payments onto the appropriate rolls. Assessor shall prepare, obtain and maintain, as necessary or desirable, such property cards, photographs, measurements, sketches, records and documents to meet all requirements set by the City and/or the State of Michigan regarding such assessment rolls and shall organize same on a basis that will provide easy access and comprehension of the information contained in each respective file and regarding each respective roll. Such information shall be entered into the City’s records system in a reasonable timely fashion.

**1.8 Reports:**

The City may require Landmark to prepare periodic reports and/or address the City Council regarding the overall activities, progress, problems and corrective measures regarding the various aspects of the duties of Landmark, under this Agreement. The City shall have the right at any time to require Landmark to make available to the City, within 48 hours of notice being provided, all records and documents developed and maintained by Landmark under the terms of this Agreement for review and/or audit. All time spent in the preparation and presentation of such reports or in gathering and making information available to City by Landmark shall be deemed a part of the services contracted under the terms and provisions of this Agreement.

**1.9 Board of Review:**

Landmark shall keep records regarding the March Board of Review session in accordance with City Charter, attached hereto as “Exhibit A”.

Landmark shall advise and provide adequate information to the Board of Review members

as to how the assessments, capped and taxable values were determined to allow them to determine how best to decide a taxpayer's appeal; such information shall include the following:

- A. Sales map indicating all neighborhood increases or decreases
- B. Sales "comparable" book to include the following:
  - 1. Current picture
  - 2. Sales price versus assessment at time of sale
  - 3. Building permits issued before or after the sale.

Landmark shall also maintain records for the July and December Boards of Review and shall advise and provide adequate information to the Board of Review members as to how the assessments, capped and taxable values were determined

**1.10 Sales and Appraisal Studies:**

Landmark shall prepare sales studies using available data, evaluate all equalization and/or appraisal studies, and respond as appropriate.

**1.11 Forms:**

Landmark shall file all forms fully completed with the Genesee County Equalization Department, State Tax Commission and other agencies and entities, as required, in a timely manner.

**1.12 Defense of Appeals:**

This Section shall apply to real and personal, IFT and ad valorem property tax appeals.

The City shall retain ultimate control of all litigation and settlement negotiations. Landmark shall operate under the direction of the City Manager in any litigation regarding a tax appeal, including appeals to the Small Claims Division.

Landmark shall defend all appeals to the Small Claims Division of the Michigan Tax Tribunal. This shall include, but not be limited to, filing necessary petitions, preparing and submitting such material, statistics and other information as is necessary to properly defend any such appeal, and appearing at all hearings and meetings as are required for the purpose of defending said appeal. The City hereby authorizes Assessor to settle, where Landmark deems it appropriate or advisable, any appeal where the difference in SEV is \$150,000 or less. All the foregoing regarding appeals to the Small Claims Division is deemed to be included the services compensated pursuant to the terms and provisions of this Agreement. If, in the opinion of the City, additional outside consulting services are needed, the City shall be responsible for the cost of such services.

In all other potential appeals to the Michigan Tax Tribunal or State Tax Commission, Landmark shall provide as part of the services included under the terms and provisions of this Agreement, such time and effort as is necessary to properly provide to the City information, documents, analysis and advice as may be required in the determination of Landmark or the City to forestall the formal filing of an appeal or to settle a disputed case up to the date of the filing of a petition appealing a decision of the City or any of its agencies or boards to the Michigan Tax Tribunal or State Tax Commission. After the filing of said petition, Landmark shall be available to the City for such further assistance as is required by the City in the defense of such appeal. Landmark shall be available as an expert witness on behalf of the City in any proceedings. In the event of the termination of this Agreement and the necessity for the services of Landmark for purposes of consulting, review of information, analysis or expert testimony after the date of termination, Landmark shall be available, notwithstanding the termination of this Agreement, for assistance in the defense of such appeals, provided, same shall not apply to appeals filed in the Small Claims Division of the Michigan Tax Tribunal. Landmark shall keep the City Manager informed of all appeals and

provide the City Manager with recommendations, the manner in which the appeals are to be handled, proposed settlements and other similar advice.

The above provisions of this Paragraph 1.12 regarding appeals shall apply equally to any appeal of a personal property tax assessment.

**1.13 Reappraisal Program:**

Landmark shall continue to reappraise parcels in the City each year, as time permits, to ensure proper assessments when parcels are “uncapped.” Maintenance renovations to structures are to be tracked so that said costs can be claimed as “new construction” when property is sold rather than treated as an increase in value that is subject to “uncapping” and results in the possibility of a Headlee rollback. The State Tax Commission recommends regular re-inspection of each property, preferably every five years. Landmark shall work to meet guidelines and standards of the Tax Commission.

**1.14 Personal Property Statements, Canvas and Audits:**

Landmark shall prepare and maintain the mailing list for personal property tax statements and maintain records for personal property including data entry and calculation of depreciated values and their extension within each statement. Landmark shall conduct a personal property canvas to ensure equity among business owners within the City. Landmark is required to perform random personal property audits when warranted by questionable data or lack of submitted data.

**1.15 Equalization Increases:**

Landmark shall strive to eliminate across-the-board increases in property values by applying any increases received through the Genesee County Equalization Department to appropriate areas by using the economic condition factors hereinabove described, by adjustment of individual property assessments to 50% of true cash value, or as required by the State Tax Commission, in order to achieve maximum equity by class, and in accordance with the latest laws and regulations then in force.

**1.16 Land Division Applications:**

Landmark shall work with and assist the City Zoning Administrator in reviewing property descriptions, land division and combination applications for compliancy with local ordinance and the Michigan Land Division Act. Such combinations and divisions shall be placed on the assessment rolls in a timely fashion.

**1.17 Assessor Certification:**

Landmark shall be, and maintain a minimum certification as a Level III Assessor in the State of Michigan.

**1.18 Transportation and Equipment:**

Landmark shall provide all necessary transportation and field equipment to perform the services and meet the requirements of this Agreement.

**1.19 Indemnification/Employment:**

The parties hereto acknowledge that all personnel that may or might be utilized by Landmark in the performance of his/her duties hereunder shall, for all purposes, be considered employees of Landmark and not employees of the City. Landmark shall be responsible for Worker’s Compensation, Unemployment Compensation, state and federal withholding and payment of personnel. Landmark shall indemnify the City and hold the City harmless from

any claim, cause of action or other liability that may or might arise by virtue of any claim of any employee of Landmark relating to his/her employment by, or as Landmark.

**1.20 Preparation of DDA and Reporting:**

Landmark shall be responsible for the recording of any property value changes, new or loss, on the ad valorem and IFT rolls relating to the designation of properties within the Downtown Development Authority (DDA).

**1.21 Assessor's Recommendations:**

Landmark shall prepare periodic recommendations and conclusions regarding the current state of the City's assessment rolls, by class, together with specific recommendations concerning actions that, in the opinion of Landmark, should be taken in order to achieve maximum equity in the assessment rolls and compliance with all State Tax Commission rules, regulations and guidelines.

**1.22 Security of Information:**

If any documents, data, drawings, specifications, photographs, property cards, summaries, accounts, reports, software applications or other products or materials are held in the possession of Landmark outside of the City offices, then Assessor shall be under an affirmative duty to provide adequate security to safeguard said materials from fire, theft and other hazards of a like nature or type, while same are in possession of Landmark. This may include, but not be limited to, providing for a fire proof safe or vault in which to store same, preparing and holding duplicates of same in the possession of Landmark, but separately or providing same to the City for possession.

**1.23 Optional Services:**

Landmark is not responsible for determination and preparation of special assessment rolls for City projects such as sewer, street, drain, etc. The City may request Landmark to perform such services at a rate of compensation agreed to by separate agreement. Landmark shall, however, report outstanding special assessments, properly completed, on forms required by the State Tax Commission, and same shall be deemed part of the services required by this Agreement.

**SECTION II: TERM OF AGREEMENT**

**2.1 Contract Period:**

Landmark shall commence performance of the services herein required on November 1, 2010. Unless sooner terminated, this Agreement shall, by its terms, expire October 31, 2011.

**2.2 Mutual Right of Termination:**

Either party may terminate this Agreement upon ninety (90) days written notice to the other, United States Certified / Registered Mail, return receipt requested, at the addresses as indicated within. This right of termination is specifically exercisable at the sole discretion of either party, and requires no just cause nor other reason or justification for the exercise thereof. The effective date of such termination shall be ninety (90) days from the date of mailing of such notice.

**2.3 Termination for Cause or Breach:**

Notwithstanding anything to the contrary on this Agreement, either party may immediately terminate this Agreement in the event of material breach by the other. In such case, either party may seek such remedies as shall be available, at law or equity.

**2.4 Notice of Termination:**

Upon receipt of notice of termination or upon termination of this Agreement by expiration of its term, Landmark shall immediately deliver to the City the originals and original copies of all data, paper and computer files, drawings, specifications, reports, value estimates, summaries and other information and materials as may have been accumulated by Landmark in performing this Agreement, whether completed or in process and same shall be in unaltered form, readable by the City. In the event of the failure or refusal of Landmark to forthwith deliver the above referenced materials, documents and files, City may seek a Circuit Court order compelling the production of same forthwith, and Landmark herein expressly waives notice of hearing thereon agreeing that a mandatory injunction may immediately issue due to the fact that the failure to receive the stated materials, documents and files will result in irreparable harm to the City without leaving the City an adequate remedy at law, thereby entitling the City to an immediate judgment in its favor in this regard. The City shall be entitled to damages from Landmark for any information, materials or documents that are turned over to the City in unusable or altered form.

**2.5 Amendment/Renegotiation:**

Nothing herein contained shall be construed to limit or abrogate the rights of the parties to modify or amend this Agreement at any time hereafter, provided however, that no such amendment or modification shall be effective unless in writing and duly executed by both parties hereto, through their authorized representatives.

If the Agreement is not reviewed or extended prior to its expiration date and the City desires to have Landmark continue on a month-to-month basis, the fee will be that which existed for the final month of the original term, being October 31, 2010.

**SECTION III: PAYMENT**

**3.1 Compensation for Basic Services:**

During the term of this Agreement, the City agrees to pay to Landmark, for performance of the Basic Services set forth in Section I of this Agreement, an amount equal to \$26,800 yearly (twenty-six thousand, eight hundred dollars). Landmark shall invoice the City an amount equal to \$2,233.33 on a monthly basis, net due 20 days.

**3.2 Pro-ration of Payments on 90-Day Termination:**

In the event this Agreement is terminated pursuant to Paragraph 2.2, the City shall pay Landmark to the date of termination on a prorated daily basis for any part of a month for which services have been rendered by Landmark and for which no compensation has been received.

**SECTION IV: CITY RESPONSIBILITIES**

**4.1 Basic Data:**

The City shall provide access to Assessor to property description files as currently exist as of the date of execution of this Agreement, containing initial information such as property number, legal description, owner and address information, as well as all data that the City may possess concerning such properties (i.e. measurements, sketches, photographs, etc.)

**4.2 Office Equipment:**

The City shall provide Landmark with appropriate tax parcel maps, office space and furniture, telephone, voice mail, personal computer, printers, copying machine, fax machine and office supplies (as defined in Paragraph 4.5) as reasonably needed during the duration

of this Agreement. Assessor acknowledges that some of the equipment (i.e. fax, printers, copying machine) is shared among all administrative office personnel and Landmark will not have exclusive use of such equipment.

Landmark shall have access to the City's computer network for the use of the following software products: BS&A Equalizer Assessing & Tax Modules, MS Word, Excel Spreadsheets, Arcview, Pictometry or any other similar software that may assist in maintaining quality assessing records. Landmark shall not use any other software within the City's network, download, or upload any software to the City's network, except with the City Manager's prior approval. Landmark shall be liable for any adverse consequence upon the City's computer network or function caused by any software introduced in the network by Landmark without prior consent of the City.

Landmark agrees that City equipment shall be used only for the purposes of fulfilling Assessor's obligations under this Agreement and shall not be used for personal reasons or to conduct other business not authorized under this Agreement.

**4.3 Computer:**

The City shall supply computer hardware, software and peripherals to perform the property pricing and valuation. The City will maintain the hardware, software and peripheral equipment through a regular maintenance program. The City will back up the system on a daily basis with alternate tapes or disks. Any data loss not due to the negligence of Landmark as a result of hardware or software malfunction will be replaced at the City's expense.

**4.4 Map Maintenance/Tax Roll Printing:**

The City shall assume the responsibility for printing, stuffing and mailing of the assessment change notices, assessment rolls, tax bills, maps, etc. during the term of this Agreement. Landmark shall develop and maintain land value maps showing dates of property sales, sale amounts and ratio to the current estimated value of the property.

**4.5 Office Supplies:**

The City shall provide Landmark with office supplies, including computer paper, file folders, hanging folders, new State Tax Commission Assessor's Manual Volumes I and II, assessment notices and forms, postage and such other supplies as shall be necessary for the performance of Assessor's responsibilities hereunder.

**4.6 Existing ECF Areas:**

The City will provide Landmark with all currently existing information as available in the City files concerning previously completed E.C.F. studies and subsequent conclusions reached by the former City Assessors.

**4.7 Preparation of DDA and Reporting:**

The Finance Director shall be responsible for the compilation and reporting of all necessary data, forms and documents relating to the operation, tax increment capture and financial condition of the D.D.A.

**4.8 Legal Counsel:**

The City shall supply legal counsel, at its expense, for Small Claims and full Tax Tribunal hearings, should the need arise.

**SECTION V: RE-APPRAISAL, NON-BASIC SERVICES**

**5.1 Additional Services (Pricing/Reappraisal):**

In the event that the City desires to implement some or all of the recommendations made by Landmark as herein contemplated, the City may request and Landmark shall provide such services as are desired by the City, provided however, an addendum to this Agreement, reduced to writing and executed by both parties, shall set forth the terms and provision under which the additional services shall be rendered. Such addendum shall specify the nature, extent and timetable for the performance of such additional services and establish the rate of compensation therefor.

**5.2 Implementation/Responsibility:**

The parties acknowledge that it shall be the sole responsibility of the City to determine the nature and extent of implementation of Landmark's recommendations under this Section or any other additional, non-basic services. To that end, the City assumes responsibility for defense of any claim, cause of action or other proceeding that may or might be instituted by the Michigan State Tax Commission, or other entity, arising from any failure, or alleged failure, to implement such recommendations.

**SECTION VI: MISCELLANEOUS PROVISIONS**

**6.1 Relationship Between City and Assessor:**

In the fulfillment of the services provided herein Landmark and his/her employees, agents and officers shall be at all times be deemed in a relationship of independent contractor to the City.

**6.2 Indemnification/Insurance:**

Landmark shall secure and maintain general liability and property damage, unemployment, errors and omissions, workers' disability compensation, automobile liability and any other insurance required by law for Landmark, or his/her employees, agents or officers as will protect him/her and the City from claims under the Worker's Compensation Acts and from claims for bodily injury, death or property damage that may arise from his/her negligence or that of his/her employees in the performance of services under this Agreement or failure to properly perform his/her duties as Assessor. Landmark shall save the City harmless and indemnify the City from any claims for bodily injury, death or property damage that may arise due to his/her acts or negligence or that of his/her employees in the performance of services under this Agreement or that arise from error or omissions to properly perform duties as Landmark. Landmark shall, however, have no liability arising out of adjustments to assessments or other actions by Landmark, the City's Board of Review and/or the Michigan Tax Tribunal if such adjustments or actions result from honest differences of opinion regarding the value of the subject property and if Landmark established the assessment pursuant to professional assessment standards. Said policies shall be in such minimum amounts as shall from time to time be acceptable to the City or as set by the City.

A Certificate of Insurance incorporating such requirements and naming the City and its officers and employees as an Additional Insured Party and Certificate Holder along with a certificate showing its premium has been paid and a copy of the policy shall be filed each year with the City Clerk. Any such insurance policy shall provide the City will be given at least thirty (30) days advance notice before cancellation of the policy. The coverage's provided by the General Liability and Automobile Liability policies of Landmark shall be primary to any insurance maintained by the City.

**6.3 Non-Assignability:**

The parties to this Agreement acknowledge that, inasmuch as the Agreement is in the nature of a Personal Services Contract, and as the City's decision to contract with Landmark is based in part on the perceived expertise and ability of Landmark, it is agreed that

Landmark's duties and obligations hereunder may not be assigned, transferred nor conveyed without the advance written approval of the City. Nothing in this Agreement shall prevent Landmark from employing such employees or agents, as Landmark shall deem reasonably necessary to assist him/her in the performance of obligations under this Agreement. Also, in the event that illness, injury or incapacity in any form, whether elective or imposed, should cause Landmark to be unable to personally fulfill the terms and obligations of this Agreement for a period exceeding three (3) calendar weeks (21 days), Landmark shall provide the City, at Landmark's expense, a certified Level III Assessor to perform any and all such functions as required by this Agreement for the complete term of the absence or incapacity. The City reserves the right to approve or reject, without cause and at its sole discretion, any Assessor designee named to "fill-in" for Landmark for a period exceeding two (2) calendar months (60 days), and to consider, as mutually agreed by the parties hereto, that a rejection of said Assessor designee shall constitute a material breach of the Agreement pursuant to the "material breach" provision of Section 2.3 herein.

**6.4 Professional Standards:**

Landmark shall be responsible, to the highest levels of competency presently maintained by other practicing professional assessors and appraisers, for the professional and technical soundness, accuracy and adequacy of property valuations, drawings, property inspection data and all other work and materials furnished under this Agreement. At the time of commencement of performance, Landmark shall be properly certified, equipped, organized and financed to perform the services required by this Agreement. Subject to compliance with the requirements of this Agreement, Landmark shall work independently.

**6.5 Ownership of Documents:**

All documents, data, drawings, specifications, photographs, property cards, summaries, accounts, reports, software applications and other information, products or materials produced or held by Landmark, of whatsoever nature or type, in connection with this Agreement shall be the sole property of the City with the City having sole and exclusive right, title and interest in any and all records, compilation, documents, papers, maps or manuscripts pertaining to or prepared pursuant to this Agreement. All of the foregoing shall be forwarded to the City at its request and may be used by the City as it sees fit. The City agrees that if any of the foregoing, prepared by Landmark, are used for purposes other than those intended by this Agreement, the City does so at its sole risk and agrees to hold Assessor harmless for such use. All services performed under this Agreement shall be conducted solely for the benefit of the City and will not be used for any other purpose by Landmark without written consent of the City. Any information relating to the services shall not be released without the written permission of the City. Landmark shall act and preserve the confidentiality of all City documents and data accessed for use in Landmark's work products to the extent allowed or required by law. Any requests for information under the Freedom of Information Act shall be immediately forwarded to the City Manager for a proper determination of the response to be provided.

**6.6 Validity:**

If any paragraph or provision of this Agreement shall be determined to be unenforceable or invalid by any court of competent jurisdiction, such provision shall be severed and the remainder of this contract shall remain in force.

**6.7 Survival:**

All express representations, indemnifications or limitations of liability made in or given in this Agreement shall survive the completion of all services of Assessor under this Agreement or the termination of the Agreement for any reason.

**6.8 Controlling Law/Venue:**

This Agreement is to be governed by the laws of the State of Michigan. It is mutually agreed that, in the event of any proceeding, at law or at equity, arising under this Agreement or breach thereof, that the venue of any such action shall be in the County of Genesee and the State of Michigan.

**6.9 Authorization:**

The respective signatories hereto expressly acknowledge that this Agreement is made and entered into with full authority of the City of Swartz Creek Council and Landmark Appraisal Company and that the persons executing this Agreement on behalf of the respective parties have been duly authorized and empowered to make and enter into this Agreement by said Council and said Assessor.

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**IN WITNESS WHEREOF**, the parties hereto have set their hands and seals the day and year first above written.

**CITY OF SWARTZ CREEK, MICHIGAN:**

**LANDMARK APPRAISAL CO:**

By: \_\_\_\_\_  
**Richard Abrams, Mayor**

By: \_\_\_\_\_  
**Mark R. MacDermaid, Partner**

By: \_\_\_\_\_  
**Juanita Aguilar, City Clerk**

Approved As To Form  
By Richard J. Figura  
City Attorney

**EXHIBIT "A"**  
**City of Swartz Creek, Charter Provisions, Taxation**

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**CHAPTER 9. TAXATION\***

**\*State law references:** General property tax act, MCL 211.1 et seq., MSA 7.1 et seq.

**Section 9.1. Power to tax--Tax limit.**

The city shall have the power to assess taxes and to lay and collect rents, tolls, and excises. During the first five years of the existence of the city, the annual general ad valorem tax levy for municipal purposes shall not exceed one-half of one per cent (5 mills) of the assessed value of all real and personal property in the city as determined by the City's Assessor and Board of Review, or one-quarter of one per cent (2 1/2 mills) of such assessed value, as equalized by the State of Michigan, as required by law, whichever basis of limitation will result in the lesser taxation upon the taxable property in the city. Thereafter, the levy shall not exceed one per cent of the said assessed value as determined by the City's Assessor and Board of Review, or one-half of one percent (5 mills) of such value as equalized by the State of Michigan, as required by law, whichever basis of limitation will result in the lesser taxation upon the taxable property in the city, unless the proposition to approve an increase above the tax rate so limited is first approved by the electors of the city. No such increase shall cause the total tax rate to exceed two per cent of the assessed value of all real and personal property in the city.

**State law references:** Mandatory that Charter provide for annually levying and collecting taxes, MCL 117.3(g), MSA 5.2073(g).

Section 9.2. Subjects of taxation--Tax procedure.

(a) The subjects of ad valorem taxation for municipal purposes shall be the same as for state, county, and school purposes under the general law.

(b) Except as otherwise provided by this chapter, city taxes shall be assessed, levied, and collected in the manner provided by law.

**State law references:** Mandatory that Charter provide that subject of taxation for municipal purposes shall be the same as for state, county and school purposes under general law, MCL 117.3(f), MSA 5.2073(f); property subject to taxation, MCL 211.1 et seq., MSA 7.1 et seq.

Section 9.3. Exemptions.

The power of taxation shall never be surrendered or suspended by any grant or contract to which the city shall be a party. No exemptions from taxation shall be allowed, except such as are expressly required or permitted by law.

**State law references:** Property exempt from taxation, MCL 211.7 et seq., MSA 7.7 et seq.

Section 9.4. Tax day.

Subject to the exceptions provided or permitted by law, the taxable status of persons and property shall be determined as of the thirty-first day of December, or such other date as may subsequently be required by law, which shall be deemed the tax day. Values on the assessment roll shall be determined according to the facts existing on the tax day for the year for which such roll is made, and no change in the status or location of any such property after that day shall be considered by the Assessor or the Board of Review.

**State law references:** Designation of tax day, MCL 211.2, MSA 7.2; time, place and method of assessment, MCL 211.10 et seq., MSA 7.10 et seq.

Section 9.5. Personal property--Jeopardy assessment.

If the Treasurer finds or reasonably believes that any person who is, or may be, liable for taxes upon personal property, the taxable situs of which was in the city on tax day, intends to depart or has departed from the city; or to remove or has removed therefrom personal property which is, or may be, liable for taxation; or to conceal or conceals himself or his property; or does any other act tending to prejudice, or to render wholly or partly ineffectual the proceedings to collect such tax, he shall proceed to collect the same as a jeopardy assessment in the manner provided by law.

**State law references:** Jeopardy assessment of personal property taxes, MCL 211.691 et seq., MSA 7.51(1) et seq.

Section 9.6. Preparation of the assessment roll.

Prior to the date of the meeting of the Board of Review in each year, the Assessor shall prepare and certify an assessment roll of all property in the city. Such roll shall be prepared in accordance with the requirements of law, and may be divided into volumes, which the Assessor shall identify the number for purposes of convenience in handling the assessment roll and for locating properties assessed therein. The attachment of any certificate or warrant required by this chapter to any volume of the roll, either as an assessment roll or as a tax roll, shall constitute the attachment thereof to the entire roll, provided the several volumes are identified in such certificate or warrant. Values of property set forth on the assessment roll shall be determined according to recognized methods of systematic assessment.

**State law references:** Mandatory that Charter provide for preparation of assessment roll, MCL 117.3(i), MSA 5.2073(i); assessment roll, MCL 211.24 et seq., MSA 7.24 et seq.

Section 9.7. Board of Review.

(a) A Board of Review is hereby created, composed of three members who have the qualifications of holding elective city office as set forth in Section 4.4 of this charter.

(b) The members of the Board of Review shall be appointed by the Council, and may be removed for reasons of nonfeasance or misfeasance by the vote of five members of the Council. The first members shall be appointed during the month of January, 1960, for terms

expiring on July 1, 1961, 1962, and 1963. Thereafter one member shall be appointed in the month of May of each year, for a term of three years, commencing on the following July first.

(c) The Board shall, annually, on the first day of its meeting, select one of its members chairman for the ensuing year. The Assessor shall be Clerk of the Board, and shall be entitled to be heard at its sessions, but shall have no vote on any proposition or question.

**State law references:** Mandatory that Charter provide for a board of review, MCL 117.3(a), MSA 5.2073(a).

#### Section 9.8. Duties and functions of Board of Review.

For the purpose of revising and correcting assessments, the Board of Review shall have the same powers and perform like duties, in all respects, as are, by law, conferred upon and required of boards of review in townships, except as otherwise provided in this charter. At the time, and in the manner provided in the following section, it shall hear the complaints of all persons considering themselves aggrieved by assessments. If it shall appear that any person or property has been wrongfully assessed or omitted from the roll, the Board shall correct the roll in such manner as it deems just. Except as otherwise provided by law, no person other than the Board of Review shall make any change upon, or addition or correction to, the assessment roll. The Board shall make no such changes, additions, or corrections after it has certified the roll as provided and required by Section 9.11 of this chapter. The Assessor shall make a permanent record of all proceedings of the Board and enter therein all resolutions and decisions of the Board. Such record shall be filed with the Clerk on or before the first day of September following the meeting of the Board of Review.

#### Section 9.9. Meetings of Board of Review.

(a) The Board of Review shall convene at 9:00 o'clock a.m. on the third Monday in March in each year at a place designated by the Council, or on such other date as may subsequently be required by law for the meeting of boards of review in cities, and shall meet at the same time and continue in session from day to day for not less than three days for the purpose of considering the assessment roll of the city.

(b) The Board of Review may examine on oath any person appearing before it respecting the assessment of property on the assessment roll. Any member of the Board may administer the oath.

**State law references:** Mandatory that Charter provide for meeting of board of review, MCL 117.3(i), MSA 5.2073(i).

#### Section 9.10. Notice of meetings.

Notice of the time and place of the annual meeting of the Board of Review shall be published by the Assessor not less than one week nor more than three weeks prior thereto.

#### Section 9.11. Certification of roll.

After the Board of Review has completed its review of the assessment roll, and not later than the Tuesday following the fourth Monday in March, or such other date as may subsequently be required by law, the majority of its members shall sign a certificate to the effect that the same is the assessment roll of the city for the year in which it has been prepared, as approved by the Board of Review, which certificate, when attached to any volume of the roll shall constitute a conclusive presumption of the validity of the entire roll, as provided in Section 9.6 of this chapter. In the event that the Board of Review shall fail or refuse to so review the assessment roll of the city, such roll, as prepared and presented to the Board of Review by the Assessor shall be the assessment roll for the year for which it was prepared and shall stand as though it had been certified by the Board of Review.

**State law references:** Completion of review of assessments prior to first Monday in April required, MCL 211.30a, MSA 7.30(1).

#### Section 9.12. Validity of assessment roll.

Upon the completion of the assessment roll, and from and after midnight ending the last day of the meeting of the Board of Review, or the first Monday in April, whichever date first occurs, it shall be the assessment roll of the city for county, school and city taxes, and for other taxes on real and personal property that may be authorized by law. It shall be

presumed by all courts and tribunals to be valid, and shall not be set aside, except for cause set forth by law.

**State law references:** Mandatory that Charter provide for levy, collection and return of state, county and school taxes, MCL 117.3(i), MSA 5.2073(i).

Section 9.13. Clerk to certify levy.

Within three days after the Council has made the appropriations for the ensuing year, the Clerk shall certify to the Assessor the total amount which the Council determines shall be raised by general ad valorem taxation, together with such other assessments and lawful charges and amounts which the Council requires to be assessed, reassessed, or charged upon the city tax roll against property or persons.

Section 9.14. City tax roll.

After the Board of Review has completed its review of the assessment roll, the Assessor shall prepare a tax roll, or a combined assessment and tax roll, to be known as the "City Tax Roll." Upon receiving the certification of the several amounts to be raised, assessed, and charged for city taxes, as provided in the preceding section, the Assessor shall proceed forthwith, (1) to spread the amounts of the general ad valorem tax according to and in proportion to the several valuations set forth in said assessment roll, and (2) to place such other assessments and charges upon the roll as are required and authorized by the Council. For convenience, the city tax roll may be divided into two or more volumes.

Section 9.15. Taxes a debt and lien.

The taxes on real and personal property shall become a debt to the city from the owner or person otherwise to be assessed, on the tax day provided by law. The amounts assessed on any interest in real property shall become a lien upon such real property on the first day of July next subsequent to the tax day, and shall so remain, until paid. Said tax liens shall take precedence over all other claims, encumbrances, and liens upon said personal property whatsoever, whether created by chattel mortgage, title retaining contract, execution, or upon any other final process of a court, attachment, replevin, judgment, or otherwise, and no transfer of personal property assessed for taxes shall operate to divest or destroy such lien, except where such property is actually sold in the regular course of retail trade.

Section 9.16. Tax roll certified for collection.

After spreading the taxes and placing other assessments and charges upon the roll, the Assessor shall certify the tax roll, and attach his warrant thereto directing and requiring the Treasurer to collect, prior to March first of the following year, from the several persons named in the roll the several sums mentioned therein opposite their respective names as a tax, charge, or assessment. Said warrant shall grant to and vest in the Treasurer, all the statutory powers and immunities possessed by township treasurers for the collection of taxes. The tax roll shall be delivered to the Treasurer on or before the thirtieth day of June.

**State law references:** Collection of taxes, MCL 211.44 et seq., MSA 7.87 et seq.

Section 9.17. Tax payment date.

City Taxes shall be due and payable on July first of each year.  
(Amended by electors 4-3-67)

Section 9.18. Taxes due--Notification thereof.

The Treasurer shall not be required to make personal demand for the payment of taxes but, upon receipt of the city tax roll, he shall forthwith mail a tax statement to each person named in the tax roll, which mailed statement shall be a sufficient demand for the payment of all taxes assessed. Neither the failure on the part of the Treasurer to mail such statement, nor the failure of any person to receive the same, shall invalidate the taxes on the tax roll or release any person or property assessed from the liabilities in this chapter in case of nonpayment.

Section 9.19. Tax payment schedule.

The Council shall provide, by ordinance, the tax payment schedule for city taxes, the times when the same may be paid without the addition of collection fees or interest, and the

amount of collection fees and interest to be added thereafter. All amounts collected as collection fees and interest shall be paid into the city's treasury for the use and benefit of the city.

**Section 9.20. Failure or refusal to pay personal property tax.**

If any person shall neglect or refuse to pay any tax on personal property assessed to him, the Treasurer shall collect the same by seizing any personal property of such person, to an amount sufficient to pay such tax, together with any charges and interest added thereto, wherever the same may be found in the State. No property shall be exempt from such seizure. He may sell the property seized, to an amount sufficient to pay the taxes and all charges, fees, penalties, and interest, in accordance with statutory provisions. The Treasurer may also sue the person to whom a personal property tax is assessed, in accordance with the powers granted to him by law.

**State law references:** Failure or refusal to pay tax, MCL 211.47, MSA 7.91.

**Section 9.21. State, county and school taxes.**

For the purposes of assessing and collecting taxes for state, county, and school purposes, the city shall be considered the same as a township and all provisions of law relative to the collection of, and accounting for, such taxes and the penalties and interest thereon shall apply. For the purpose of collection of state, county, and school taxes, the Treasurer shall perform the same duties and have the same powers as township treasurers under state law.

**State law references:** Mandatory that Charter provide for levy, collection and return of state, county and school taxes, MCL 117.3(i), MSA 5.2073(i); state law relative to the assessment, levy and collection of taxes, MCL 211.1 et seq., MSA 7.1 et seq.

**Section 9.22. Protection of city lien.**

The city shall have power, insofar as the exercise thereof shall not conflict with or contravene the provisions of law, to acquire such an interest in any premises within the city, by purchase at any tax or other public sale, or by direct purchase from or negotiation with the State of Michigan or the owner, as may be necessary to assure to the city the collection of its taxes, special assessments, charges, and any interest thereon which are levied against any lot or parcel of real property or to protect the lien of the city therefor, and may hold, lease, or sell the same. Any such procedure exercised by the city to assure the collection of its taxes or the protection of its tax or other liens shall be deemed to be for a public purpose. The Council may adopt any ordinance which may be necessary to make this section effective.

**Section 9.23. Collection of delinquent taxes.**

All taxes and charges, together with fees, penalties, and interest upon real property on the tax roll, remaining uncollected by the Treasurer on the first day of March following the date when the roll was received by him shall be subject to one of the following procedures:

(1) The real property against which such taxes and charges are assessed shall be subject to disposition, sale, and redemption for the enforcement and collection of the tax lien against the same in the method and manner which may be provided by ordinance. The Council may provide by ordinance the procedure for the sale and redemption of real property for such unpaid taxes and charges, together with fees, penalties, and interest, by judicial sale on petition filed in behalf of the city. Such procedure shall correspond substantially to the procedure provided by law for the sale by the State of tax delinquent real property and redemption therefrom, except that the acts performed by state and county officers shall be performed by appropriate city officers and that city tax sales shall be held not less than thirty nor more than ninety days prior to the date of corresponding tax sales under the general law.

(2) If no ordinance is in effect pursuant to subsection (1) of this section, such taxes shall be returned to the County Treasurer, to the extent and in the same manner and with like effect as provided by law for returns by township treasurers of township, school and county taxes. Such returns shall include all the additional assessments, charges, fees, penalties, and interest hereinbefore provided, which shall be added to the amount assessed in said tax roll against such property or person. The taxes thus returned shall be collected in the same manner as other taxes returned to the County Treasurer are collected, in accordance with law, and shall be and remain a lien upon the property against which they are assessed until paid.

Section 9.24. Disposition of real property held by city.

When the city has acquired any interest in property to protect the city's tax lien thereon, the owner of any interest therein by fee title, as mortgagee, or as vendor or vendee under a land contract, shall have the right to purchase the city's interest therein, upon payment to the city of the amount of money which the city has invested therein in the form of taxes, special assessments, charges, fees, penalties, interest, and costs, paid by the city to protect its title in such property. After the lapse of ninety days after the date that the city acquires title to any such property, the Council may remove the same from the market by determining that such property is needed for and should be devoted to public purposes, naming such purposes, or may sell the same at a price which shall be not less than the market value, as determined.

And further, direct the Mayor and City Clerk to endorse and execute this agreement on behalf of the City.

Discussion Took Place.

YES: Hicks, Hurt, Porath, Shumaker, Abrams, Binder.

NO: None. Motion Declared Carried.

## **MEETING OPENED TO THE PUBLIC**

Boots Abrams spoke about the Fall decorating the Women's Club will be doing at the arch downtown.

Tommy Butler, 40 Somerset, spoke about financial problems in the City and no solutions being offered. Mr. Butler suggested possible tax increases if necessary. Mr. Butler commended the Women's Club for all of their work in making the City more beautiful.

## **REMARKS BY COUNCILMEMBERS:**

Councilmember Hicks asked about Consumer's Power coming and giving the City more information. Mr. Bueche stated that he has sent out e-mails but no one has responded yet.

Mayor Pro-Tem Porath apologized for interrupting Mr. Butler.

## **Adjournment**

**Resolution No. 100927-10**

**(Carried)**

Motion by Mayor Pro-Tem Porath

Second by Councilmember Binder

**I Move** the City of Swartz Creek adjourn the Regular Session of the City Council meeting at 8:35 p.m.

YES: Unanimous Voice Vote.

NO: None. Motion declared carried.

Richard Abrams, Mayor

Deanna Korth, Deputy City Clerk